

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Stephen DiFiore	Team: Squad #5	CCRB Case #: 202003031	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 04/24/2020 9:41 PM	Location of Incident: § 87(2)(b)	Precinct: 14	18 Mo. SOL 10/24/2021	EO SOL 5/4/2022	
Date/Time CV Reported Fri, 04/24/2020 11:42 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 05/04/2020 11:09 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Ryan Donnellan	09304	963015	MTS PCT
2. POF Mary Vecchio	01641	961411	MTS PCT
3. POM Thomas Bucholz	24774	962958	MTS PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Mohammad Khan	03544	949880	MTS PCT
2. POF Stacey Lamotta	23510	963107	MTS PCT
3. POM Ryan Maloney	15670	961908	MTS PCT
4. POM Perry Michaels	27709	959818	MTS PCT
5. SGT Alexis Valdez	00596	942635	PBMS SU

Officer(s)	Allegation	Investigator Recommendation
A.POM Thomas Bucholz	Abuse: Police Officer Thomas Bucholz damaged § 87(2)(b) property.	§ 87(2)(b)
B.POM Thomas Bucholz	Abuse: Police Officer Thomas Bucholz entered § 87(2)(b) in Manhattan.	§ 87(2)(b)
C.POM Ryan Donnellan	Abuse: Police Officer Ryan Donnellan entered § 87(2)(b) in Manhattan.	§ 87(2)(b)
D.POF Mary Vecchio	Abuse: Police Officer Mary Vecchio entered § 87(2)(b) in Manhattan.	§ 87(2)(b)
E.POM Ryan Donnellan	Force: Police Officer Ryan Donnellan pointed his gun at § 87(2)(b)	§ 87(2)(b)
F.POM Ryan Donnellan	Discourtesy: Police Officer Ryan Donnellan spoke discourteously to § 87(2)(b)	§ 87(2)(b)
G.POM Thomas Bucholz	Abuse: Police Officer Thomas Bucholz threatened § 87(2)(b) with the use of force.	§ 87(2)(b)
H.POF Mary Vecchio	Discourtesy: Police Officer Mary Vecchio spoke discourteously to § 87(2)(b)	§ 87(2)(b)
I.POM Thomas Bucholz	Discourtesy: Police Officer Thomas Bucholz spoke discourteously to § 87(2)(b)	§ 87(2)(b)

Case Summary

On April 24, 2020, § 87(2)(b) filed this complaint by phone with IAB, generating original log § 87(2)(b). The CCRB received the complaint on May 4, 2020.

On April 24, 2020, at approximately 9:41 p.m., § 87(2)(b) was alone in his apartment at § 87(2)(b) in Manhattan. Police Officers Thomas Bucholz, Ryan Donnellan, Mary Vecchio, Stacey Lamotta, Ryan Maloney, Perry Michaels, and Sergeant Mohammad Khan, all assigned to Midtown South, responded to § 87(2)(b) floor after receiving a 911 call about a possible burglary at the building. Upon seeing physical damage to § 87(2)(b) apartment door, PO Bucholz, PO Donnellan, and PO Vecchio collectively decided to enter § 87(2)(b) apartment, with PO Bucholz pushing the door open and breaking a latch in the process (**Allegations A-D: Abuse of Authority**, § 87(2)(g)).

PO Donnellan pointed his gun at § 87(2)(b) (**Allegation E: Force**, § 87(2)(g)). PO Donnellan simultaneously told him, “Let me see your fucking hands” (**Allegation F: Discourtesy**, § 87(2)(g)). § 87(2)(b) then briefly moved out of view before returning holding a backpack, at which point PO Bucholz pointed his Taser at § 87(2)(b) (**Allegation G: Abuse of Authority**, § 87(2)(g)). PO Vecchio then told § 87(2)(b) “Put your fucking hands up” (**Allegation H: Discourtesy**, § 87(2)(g)). PO Bucholz told § 87(2)(b) “Get on the floor, on your fucking face” (**Allegation I: Discourtesy**, § 87(2)(g)). The officers left after confirming that § 87(2)(b) resided in the apartment. The incident did not result in anyone being arrested or issued a summons.

The investigation obtained BWC footage (Board Review 01-07, summarized in Board Review 08-09). All references to video refer to the timestamp in the video player and not to any on-screen clock embedded in the footage itself.

PO Donnellan has since been reassigned to Bronx Narcotics.

This case was reassigned from Inv. Faria Tasnim to Inv. DiFiore on September 12, 2020, after Inv. Tasnim’s departure from the CCRB. This investigation was delayed by the COVID-19 disruption of officer interviews.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Thomas Bucholz damaged § 87(2)(b) property.

Allegation (B) Abuse of Authority: Police Officer Thomas Bucholz entered § 87(2)(b) in Manhattan.

Allegation (C) Abuse of Authority: Police Officer Ryan Donnellan entered § 87(2)(b) in Manhattan.

Allegation (D) Abuse of Authority: Police Officer Mary Vecchio entered § 87(2)(b) in Manhattan.

It is undisputed that § 87(2)(b) door was missing a doorknob and had physical damage consistent with it having been forced open. The damage resulted from firefighters making forced entry for a different incident a few weeks beforehand. It is further undisputed that PO Bucholz opened the apartment door, and that he, PO Donnellan, and PO Vecchio entered the apartment in quick succession. PO Bucholz testified that the decision to enter was his, while PO Vecchio and PO Donnellan both testified that it was a shared decision by all of them.

The incident stemmed from a 911 call made by § 87(2)(b) neighbor, whom the investigation identified as § 87(2)(b). She lived in § 87(2)(b) and she reported that she heard a man in the hallway yelling and trying to break into a neighboring apartment (Board Review 10). The

shorthand text which was visible to the officers in the 911 system stated that a female caller reported a man trying to break into an apartment “§ 87(2)(b)” and that there was no description of the man (Board Review 11). Over the radio, the dispatcher announced the incident and directed units to respond to the building (Board Review 12). The dispatcher noted the incident involved § 87(2)(b) and said only, “States a male is breaking into the location.” PO Bucholz and PO Vecchio reached the building within approximately two minutes. At almost that exact same time, Sergeant Alexis Valdez, who was the Patrol Borough Manhattan South Anticrime sergeant, stated over the radio that he was on the phone with the 911 caller, and that it seemed like the incident only involved a disorderly man on the fourth floor and did not involve a burglary in progress. He wanted units to check and advise. Around this time, the text in the 911 system was updated to reflect that the 911 caller stated the apartment door had a padlock and was previously burned in a fire, and that she was inside her apartment and could not see the man who was yelling. Within another minute, PO Vecchio asked the dispatcher to call the 911 caller, because the officers could not get through the building’s locked front door. Sgt. Valdez then responded over the radio, “She should be letting you guys in right now.” The text in the 911 system was not updated to reflect Sgt. Valdez’s belief that the incident did not involve a robbery in progress until approximately six minutes after the initial 911 call. Based upon the time stamps in the BWC footage, PO Bucholz, PO Vecchio, and PO Donnellan were already at § 87(2)(b) door by that time and were about to make entry.

§ 87(2)(b) (Board Review 13) recounted that he was sleeping in his bedroom at the time of the incident, and he heard loud yelling and banging outside his apartment. He went to the living room and found that the officers were already inside the apartment. § 87(2)(b) further alleged that the “bolt” that held the door shut was broken as a result of the officers’ entry. He mentions this to PO Vecchio at 08:30 in her BWC footage (Board Review 03).

The BWC footage provided a comprehensive record of this portion of the incident, especially the clips from PO Michaels and PO Bucholz (Board Review 05 & 01). PO Michaels’ BWC footage, beginning at approximately 01:00, shows that PO Bucholz and PO Vecchio parked in front of the building while PO Michaels waited at the door. At that time, Sgt. Valdez can be heard over the radio announcing that he is on the phone with the 911 caller and that the situation does not seem to involve a burglary in progress. PO Vecchio can be seen holding her radio up to her ear at this time, and PO Bucholz is also holding his radio.

Beginning at approximately 01:00 in PO Bucholz’s footage, he and PO Michaels looked on as PO Vecchio buzzed numerous apartments to attempt to gain entry to the building. At that time, PO Michaels remarked that the dispatcher had mentioned § 87(2)(b). PO Bucholz and PO Vecchio entered the building together and went directly to the fourth floor. PO Bucholz reached the fourth floor at approximately 03:10 in the footage, at which point he noticed the damage to § 87(2)(b) door. PO Bucholz remarked that he could hear that someone was inside the apartment. PO Vecchio stood behind PO Bucholz. PO Michaels accompanied them to the door, but he retreated partway downstairs after PO Bucholz asked him to check which officers were also coming upstairs. PO Bucholz and PO Vecchio also inquired about the location of Sgt. Valdez. PO Donnellan arrived, remarked that Sgt. Valdez had not come in the building, and then stood behind PO Bucholz at the apartment door. The three officers conferred momentarily before PO Bucholz said that he was going to enter the apartment. PO Bucholz forcibly opened the apartment door and entered within approximately one minute of reaching the fourth floor. PO Donnellan followed behind him, and PO Vecchio entered shortly afterward. None of the officers knocked on the door, announced themselves, spoke to any other residents, consulted with a supervisor, or took any further investigative steps prior to entering the apartment.

After making entry and restraining § 87(2)(b) PO Bucholz spoke to § 87(2)(b) at her apartment, which was across from § 87(2)(b) apartment. She explained that she called 911 because she heard someone kicking a door, but she did not see which door. She pointed out that it might have been the door to an apartment adjacent to her apartment, as that door also appeared to be damaged.

PO Bucholz was not interviewed until approximately eight months after the incident (Board

Review 14). He testified that he learned from the dispatcher that there was a report of a burglary in progress at the address. He recalled that a neighbor reported the burglary, but he did not recall if he received an apartment number either for the apartment where the burglary was taking place or for the apartment of the neighbor who called 911. He did not recall receiving any additional information from the dispatcher. He listened at § 87(2)(b) door after seeing the damage, and he heard movement from within the apartment. He did not recall hearing anyone speaking, and he heard nothing that indicated that there were any violent actions taking place. Based solely upon the report of the burglary and the damage to § 87(2)(b) door, PO Bucholz concluded that someone was inside the apartment who should not have been there. He did not knock on the door and did not announce himself because he believed there was a crime in progress and thus did not want to make his presence known.

PO Vecchio was not interviewed until approximately ten months after the incident. She similarly testified that she was responding to a burglary in progress, and she recalled that they saw on the computer terminal in her vehicle that the 911 caller was “verified” because the caller had provided a name and phone number (Board Review 15). She believed an apartment number was included with the job, but she could not recall it by the time of the interview. She could not recall any further details she learned over the radio. She similarly testified that the damage to § 87(2)(b) door led her to believe that a burglar had made forced entry into the apartment. After reviewing BWC footage, she also noted that hearing the sounds of someone inside the apartment further confirmed her suspicion that someone had made forced entry into the apartment. She could not recall if she or other officers took any further investigative steps prior to entering the apartment. Initially, she also could not recall how they gained entry, who made the decision to enter, or who entered the apartment first. After viewing BWC footage, she described the decision to enter as being shared between her, PO Bucholz, and PO Donnellan. She also noted that the verified 911 call, the damage to the door, and the noise coming from inside the apartment provided a sufficient basis for the officers to enter the apartment without taking any further investigative steps.

PO Donnellan was not interviewed until approximately 11 months after the incident (Board Review 16). He recounted the information which came over the 911 text system in much greater detail than did PO Bucholz and PO Vecchio, but it was apparent that his testimony was based in part upon his having reviewed the 911 records in anticipation of his CCRB interview. As a result, it was difficult to discern which information PO Donnellan was aware of at the time he entered § 87(2)(b) apartment. He noted that he usually reads the 911 text for a job while he is responding. He recounted that the 911 caller was verified, and that she reported hearing someone yelling and breaking into an apartment adjacent to § 87(2)(b). PO Donnellan did not recall seeing that the 911 caller had mentioned a damaged door with a padlock where there had been a fire.

Upon reaching the fourth floor and seeing the damage to § 87(2)(b) door, PO Donnellan observed the other apartment doors in the vicinity and did not see any damage or anything suspicious. Based upon the 911 call and the damage to § 87(2)(b) door, PO Donnellan concluded that a burglary was in progress inside § 87(2)(b) apartment. He described the decision to enter the apartment as a shared one made among the officers who were present. He did not first attempt to make contact with the occupant of § 87(2)(b) because he believed there were exigent circumstances requiring an immediate entry into § 87(2)(b) apartment. He did not first knock on § 87(2)(b) door because doing so would have alerted any burglar inside to the officers’ presence, which would have given a burglar the opportunity to come to the door and injure the officers as they entered.

PO Donnellan ultimately prepared a Stop Report to document the officers’ interaction with § 87(2)(b) (Board Review 17). The report incorrectly states that officers spoke to the 911 caller “upon arrival.” PO Donnellan explained in his testimony that he merely meant to list everything the officers did on scene, but not in any particular order, and he confirmed that the officers did not speak to the 911 caller until after making entry.

Neither PO Bucholz nor PO Donnellan could remember there being a bolt or lock on the door that was keeping it closed. The investigation credited § 87(2)(b) testimony that the bolt holding the door closed was damaged as a result of the officers’ entry, both in light of the officers’ failure to deny

it and the BWC footage showing that PO Bucholz was not able to easily open the door and ultimately had to push it with some force.

Officers are permitted to make a warrantless entry into a residence if there are exigent circumstances or emergency circumstances. *People v. McBride*, 14 N.Y. 3d 440 (2010), lists many established factors that police should take into account in determining exigent circumstances, stating, “In determining whether exigent circumstances are present, both the federal and state courts have applied a number of different factors. These factors include ‘(1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) whether the suspect is reasonably believed to be armed; (3) a clear showing of probable cause . . . to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that the suspect will escape if not swiftly apprehended; and (6) the peaceful circumstances of the entry.’” *McBride* further holds that “police themselves cannot by their own conduct create an appearance of exigency” (Board Review 18).

People v. Doll, 21 N.Y. 3d 665 (2013), holds that “the [emergency] exception is comprised of three elements: (1) the police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property and this belief must be grounded in empirical facts; (2) the search must not be primarily motivated by an intent to arrest and seize evidence; and (3) there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched” (Board Review 19).

§ 87(2)(g)

Based upon the 911 call, the apparent damage to the door, and the sound of movement inside, they quickly jumped to the conclusion that a burglar was in § 87(2)(b) apartment. § 87(2)(g)

They did not hear any sounds from the apartment which suggested any violence occurring inside. They did not contact the 911 caller on scene, either to get more detailed information about what she had actually seen and heard or to confirm which apartment was the subject of her call. They also did not conduct any meaningful examination of other nearby apartment doors, did not wait to consult with a supervisory officer, and did not seek out any building staff. Moreover, in their haste, they overlooked or ignored multiple indications that their assessment of the incident was incorrect, including the 911 caller’s report that an apartment door had prior damage from a fire, and Sgt. Valdez’s radio transmissions that he did not believe a burglary was in progress.

§ 87(2)(g)

Allegation (E) Force: Police Officer Ryan Donnellan pointed his gun at § 87(2)(b)

Allegation (F) Discourtesy: Police Officer Ryan Donnellan spoke discourteously to § 87(2)(b)

Allegation (G) Abuse of Authority: Police Officer Thomas Bucholz threatened § 87(2)(b) with the use of force.

Allegation (H) Discourtesy: Police Officer Thomas Bucholz spoke discourteously to § 87(2)(b)

Allegation (I) Discourtesy: Police Officer Mary Vecchio spoke discourteously to § 87(2)(b)

As noted above, the officers all testified that they believed they were entering an apartment in which a burglary was in progress. It is undisputed that PO Bucholz pointed his taser at § 87(2)(b) and that PO Donnellan pointed his gun at § 87(2)(b) at some point after officers entered § 87(2)(b)

apartment. It is also undisputed that the officers were dressed in uniform but did not verbally identify themselves as officers when they entered the apartment.

§ 87(2)(b) recounted that he ran back toward the kitchen area and out of the sight of the officers as soon as they broke into his apartment. He was the only one in the apartment at the time. When he returned, he was holding a black bookbag and specifically was reaching inside for a screwdriver, as he did not immediately realize that the people breaking into his apartment were police officers.

At 03:25 in his BWC, PO Donnellan enters the unit with his gun drawn. § 87(2)(b) asks, “What the fuck are you doing?” At 03:35, PO Donnellan says, “Let me see your fucking hands,” and points his gun at § 87(2)(b) immediately upon seeing him. § 87(2)(b) then retreats back farther into his apartment, at which point PO Bucholz says, “I’ll go Taser,” before pointing his Taser in the direction that he last saw § 87(2)(b). PO Donnellan’s BWC at 03:50 confirms that § 87(2)(b) was holding a bag after returning from his retreat into the kitchen. § 87(2)(b) immediately drops the bag and puts his hands up. At that same time, PO Vecchio can be heard in the background yelling, “Put your fucking hands up,” while PO Donnellan is repeating, “Let me see your fucking hands.”

PO Donnellan continues pointing his gun at § 87(2)(b) and PO Bucholz continues pointing his Taser at him, after he drops the backpack and puts his hands up above his head. The officers continue pointing their weapons at him until 04:14. Between 03:54 and 04:14, § 87(2)(b) is sitting on the ground, but the officers continue to tell him to lie down completely with their weapons still pointed at him. At 04:03, § 87(2)(b) recoils at the sight of PO Donnellan’s gun before lying down in a prone position. During this time, PO Bucholz can be heard saying, “Get on the floor. On your fucking face.”

Patrol Guide Procedure 221-01 states, “The decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present. When a uniformed member of the service determines that the potential for serious physical injury is no longer present, the uniformed member of the service will holster the firearm as soon as practicable” (Board Review 20). Patrol Guide Procedure 221-01 further states that officers “are authorized under New York State law to discharge a firearm to prevent or terminate the unlawful use of force that may cause death or serious physical injury,” but that, “Members of the service SHALL NOT discharge a firearm when, in the professional judgment of a reasonable member of the service, doing so will unnecessarily endanger innocent persons.”

Patrol Guide Procedure 221-08 notes that a Taser “can be an effective means of subduing aggressive suspects and emotionally disturbed persons.” A Taser “should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other person(s) actually present” (Board Review 21). Active resistance “includes physically evasive movements to defeat a member of the service’s attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.” Active aggression is a “threat or overt act of an assault...coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent.”

Patrol Guide Procedure 221-01 also mandates that any use of force must be reasonable under the circumstances. “In determining whether the use of force is reasonable, members of the service should consider the following:

- a. The nature and severity of the crime/circumstances
- b. Actions taken by the subject
- c. Duration of the action
- d. Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders
- e. Whether the subject is actively resisting custody
- f. Whether the subject is attempting to evade arrest by flight
- g. Number of subjects in comparison to the number of MOS

- h. Size, age, and condition of the subject in comparison to the MOS
- i. Subject's violent history, if known
- j. Presence of hostile crowd or agitators
- k. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence."

Patrol Guide Procedure 200-02 holds that officers are required to "render [their] services with courtesy and civility" (Board Review 22).

§ 87(2)(g)

PO Donnellan had no specific indication that § 87(2)(b) was armed at the time, much less that he represented a threat of death or serious physical injury. As noted above, PO Donnellan's belief that there was a burglary in progress and that anyone in the apartment would need to be detained was not well-founded. Regardless, he still lacked sufficient evidence to justify threatening § 87(2)(b) with deadly force by pointing a gun at him.

§ 87(2)(g)

§ 87(2)(b) was not exhibiting active resistance or active aggression, and PO Bucholz lacked sufficient reason to fear for his safety or believe that § 87(2)(b) represented a threat of physical harm—especially after § 87(2)(b) put his hands up. Having forcibly entered the apartment without warning § 87(2)(g) the officers further escalated the situation by pointing weapons at the apartment's legal occupant.

§ 87(2)(g)

The investigation found no evidence that there was ever any credible threat to safety that would have necessitated the use of profanity, and that any escalation of the situation was caused largely by the officers' own actions. § 87(2)(b) initial, momentary failure to comply with the command to get on the ground did not result in any risk of danger or disorder that would outweigh the officers' responsibility to act courteously.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 23).
- PO Thomas Bucholz has been a member of service for four years and has been a subject in three CCRB complaints and five allegations, none of which were substantiated. He is currently the subject of a physical force allegation in CCRB case 202002706. § 87(2)(g)
- PO Ryan Donnellan has been a member of service for four years and this is the first CCRB complaint to which he has been a subject.
- PO Mary Vecchio has been a member of service for five years and has been a subject in two CCRB complaints and three allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of December 9, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (Board Review 25).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 5

Investigator: Stephen J. DiFiore Inv. Stephen DiFiore September 15, 2021
Signature Print Title & Name Date

Squad Leader: Daniel Giansante IM Daniel Giansante September 15, 2021
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date